

JOHN PERSELL  
Oregon Wild  
5825 N Greeley Ave  
Portland, OR 97217  
503-896-6472  
Email: jp@oregonwild.org

MERIEL L. DARZEN  
Crag Law Center  
3141 E. Burnside St.  
Portland, OR 97214  
503-525-2725  
Email: meriel@crag.org

*Attorneys for Plaintiff*

TODD KIM  
Assistant Attorney General  
Environment & Natural Resources Division  
U.S. Department of Justice

KRYSTAL-ROSE PEREZ, TX Bar No. 24105931  
Trial Attorney  
Natural Resources Section  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
Tel: (202) 305-0486  
E-mail: krystal-rose.perez@usdoj.gov

*Attorney for Defendant*

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION**

OREGON WILD,

*Plaintiff,*

v.

UNITED STATES FOREST SERVICE,

*Defendant.*

Case No. 3:23-cv-935-SB

**PARTIES' PROPOSED  
SCHEDULING ORDER**

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, the parties have conferred, and undersigned counsel for the parties hereby submit their proposed scheduling order below. The parties are in agreement as to the issues set forth below and respectfully request that the Court enter this proposed scheduling order.

**I. Parties and Representatives:**

A. Plaintiff: Plaintiff in this case is Oregon Wild. Counsel for Plaintiff are

John Persell  
Oregon Wild

5825 N Greeley Ave  
Portland, OR 97217  
503-896-6472  
Email: [jp@oregonwild.org](mailto:jp@oregonwild.org)

Meriel L. Darzen  
Crag Law Center  
3141 E. Burnside St.  
Portland, OR 97214  
503-525-2725  
Email: [meriel@crag.org](mailto:meriel@crag.org)

B. Defendant: Defendant in this case is the United States Forest Service, an agency of the United States Department of Agriculture. Counsel for Defendant is

Krystal-Rose Perez  
U.S. Department of Justice  
Environment and Natural Resources Division  
Natural Resources Section  
(202) 305-0486  
[krystal-rose.perez@usdoj.gov](mailto:krystal-rose.perez@usdoj.gov)

## **II. Nature of the Case**

On June 27, 2023, Plaintiff filed a lawsuit challenging the U.S. Forest Service's decision to authorize the Grasshopper Project on the Mount Hood National Forest for alleged violations of Section 7 of the Endangered Species Act (ESA), 16 U.S.C. § 1536(a)(2), and the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370(h). On October 30, Plaintiff amended its complaint and included claims under NEPA but not the ESA, ECF No. 12. Plaintiff seeks vacatur of allegedly illegal agency actions; injunctive and declaratory relief under the judicial review provisions of the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706, and attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412. Defendant denies that it is in violation of law and further denies that Plaintiff is entitled to the relief it requests.

### **III. Administrative Record**

The parties agree that the merits of Plaintiff's claims are governed by the judicial review provisions of the APA, 5 U.S.C. §§ 701-706. The parties further agree that this case is therefore exempt from initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1)(B)(i), and from the requirements of Rule 26(f) of the Federal Rules of Civil Procedure.

### **IV. Trial**

The parties believe that the merits of this case should be resolved on cross-motions for summary judgment and do not anticipate that a trial will be appropriate or required in this case.

### **V. Jurisdiction and Venue**

Plaintiff alleges this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2201 (injunctive relief) and 28 U.S.C. § 1346 (United States as a Defendant). Plaintiff alleges venue is proper in this Court pursuant to 28 U.S.C. § 1391.

### **VI. Proposed Deadlines**

The parties respectfully request that the Court adopt the following schedule for this case.

#### **A. Administrative Record**

1. On or before January 10, 2024, Defendant will certify and lodge the Administrative Record with the Court pursuant to Local Civil Rule 5-2(f)(2)(B). On the same day Defendant lodges the Administrative Record with the Court, Defendant will serve Plaintiff with a copy of the Administrative Record on a USB drive or via a cloud-based filing sharing platform.

2. On or before January 24, 2024, the parties will confer to address any issues with the Administrative Record.

3. On or before February 7, 2024, the parties will attempt to resolve any Administrative Record matters without judicial intervention.

4. On or before February 21, 2024, any motions to supplement or complete the Administrative Record must be filed. In the event that any such motions are filed, the parties further agree to submit a joint proposed schedule for the parties' briefing on those motions concurrently therewith and, if necessary, to submit a joint proposed amended schedule for the parties' dispositive briefing.

**B. Summary Judgment Briefing**

If no motions to supplement or complete the Administrative Record are filed, the parties agree to the following proposed schedule for briefing on cross-motions for summary judgment. This round of motions will resolve all claims in this action.

1. Plaintiff's opening summary judgment brief shall be due March 15, 2024
2. Defendant's combined cross-motion and response brief shall be due April 19, 2024.
3. Plaintiff's combined response and reply brief shall be due May 17, 2024.
4. Defendant's reply brief shall be due May 31, 2024.

**VII. Related cases**

There are not any related cases pending before other courts or judges in this Court.

**VIII. Settlement Procedures**

The parties are amenable to discussing alternate dispute resolution options should such options appear to be fruitful at a future juncture.

**IX. Other Matters**

None.

Respectfully submitted this 5th day of December 2023.

/s/ John Persell (with permission)

John Persell (OSB # 084400)

Oregon Wild

5825 N Greeley Ave

Portland, OR 97217

(503) 896-6472

[jp@oregonwild.org](mailto:jp@oregonwild.org)

*Attorney for Plaintiff*

TODD KIM

Assistant Attorney General

U.S. Department of Justice

Environment & Natural Resources Division

/s/ Krystal-Rose Perez

KRYSTAL-ROSE PEREZ (TX Bar No. 24105931)

Trial Attorney

Natural Resources Section

P.O. Box 7611, Ben Franklin Station

Washington, D.C. 20044-7611

Tel: (202) 305-0486

E-mail: [krystal-rose.perez@usdoj.gov](mailto:krystal-rose.perez@usdoj.gov)

*Attorney for Federal Defendant*